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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,282	01/26/2004	Hubert Heeg	87333.3301	6488

7590 09/22/2005

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WASHINGTON, DC 20036

EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/763,282

Applicant(s)

HEEG ET AL.

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-13-04</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Supper 863009.

The claim language is so broad that the reference to Supper reads upon the claimed invention. Supper discloses plural storage spaces in between each sector defined by bars 11, with a shaking unit 21, 22, a shaking platform frame 14 and a respective base unit 25, spacer 19, clamp element 17

With regards to the permanence (claims 2) or detachable feature (claim 3), note that the device, when operated, is permanent when connected together for operational use, and may be detachable when the device is taken apart for repairs.

With regards to claim 4, the claim is directed to the subcombination of the storage/shaking device and not to the particulars to the automated transport. The structure is fully satisfies the capability to be supplied and removed by an appropriate automated robot specifically designed for the removal and supply of the specimen chamber 12.

4. Claims 1-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Gebrain et al . 6808304.

The claim language is so broad that the Gebrain (et al) reference reads upon the claimed invention.

The claim language is so broad that the reference to Gebrain reads upon the claimed invention. Gebrain, see especially figures 6-6A discloses plural storage spaces in between each sector defined by 84, 84, 84, with a shaking unit 86, a shaking platform 64 and a respective base unit 88 , spacer 93, and clamp unit 102, 104,

With regards to the permanence (claims 2) or detachable feature (claim 3), note that the device, when operated, is permanent when connected together for operational use, and may be detachable when the device is taken apart for repairs.

With regards to claim 4, the claim is directed to the subcombination of the storage/shaking device and not to the particulars to the automated transport. The structure is fully satisfies the capability to be supplied and removed by an appropriate automated robot specifically designed for the removal and supply of the specimen chamber.

With regards to claims 7-11, and 13, note that the device has a control unit would inherently have commonly known use of wires which may be operatively connected via commonly known wire connectors to provide cooperation with the controller for operation of the device.

With regards to claim 12, the positioning of the shaking unit is directed to a claimed recitation to a functional operation of the structure and does not provide a positive recitation of structural limitation to the previously claimed element and only require the ability to operate in such a manner. The provision of the controller and shaker unit with platform may be capable of fully operating to a zero position if the controller is programmed to do so.

***Claim Rejections - 35 USC § 103***

5. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malterer et al US 2003/0215357 in view of Heinonen et al 5346303.

The Malterer (et al) reference discloses a storage device 10 with plural storage space positions 200A, 200B, which teaches each may contain a respective shaking unit module, see paragraph [0087], line 8, which is held and supported with base clamps 210, and base shelf plate 201 for each respective shaker unit module [0080]. It is also noted that the environment of the storage device may be controlled by a element 130, paragraph [0053].

Heinonen discloses all of the recited subject matter as defined within the scope of the claims with the exception of particulars of the shaking unit module having a shaking platform with the respective base unit.

The Heinonen (et al) reference teaches a shaker/incubator device may have a base unit connected to motor 21, inherent respective wiring and controllers, and at least one shaking platform 11, 12, for shaking plural containers,.

In view of the teaching of Heinomen that a shaking unit may include having a base unit connected to motor 21, and shaking platform 11, 12, it is deemed that it would have been obvious to one of ordinary skill in the art to provide the shaker units Heinomen (et al) into each of the storage space positions so that plural shakers may be operated inside the storage device of the Malterer (et al) reference

With regards to the permanence (claims 2) or detachable feature (claim 3), note that the device, when operated, is permanent when connected together for operational use, and may be detachable when the device is taken apart for repairs.

With regards to claim 4, the claim is directed to the subcombination of the storage/shaking device and not to the particulars to the automated transport. The structure is fully satisfies the capability to be supplied and removed by an appropriate automated robot specifically designed for the removal and supply of the specimen chamber.

With regards to claims 7-11, and 13, note that the device has a control unit would inherently have commonly known use of wires which may be operatively connected via

commonly known wire connectors to provide cooperation with the controller for operation of the device.

With regards to claim 12, the positioning of the shaking unit is directed to a claimed recitation to a functional operation of the structure and does not provide a positive recitation of structural limitation to the previously claimed element and only require the ability to operate in such a manner. The provision of the controller and shaker unit with platform may be capable of fully operating to a zero position if the controller is programmed to do so.

#### **Examiner remarks**

Note that the recitation of an incubator is deemed and considered to be immaterial to the claimed invention whereby such supportive structure to function to incubate has not been positively claimed in the combination of elements defined as the claimed invention.

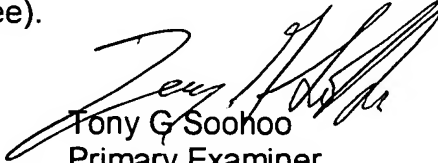
#### **Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Friedman 6659563, Otani 4921676, Torchia et al 5431201, felkins 2005/0115325, Ruediger et al US2001/00119705, Hanaway 4719087, and Tannebaum et al 5372425.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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